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DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

(T.D. 76-165)

Availability of Information—Customs Regulations amended

Section 103.10(d), Customs Regulations, relating to privileged or confidentia information exempt from disclosure, amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 103 – AVAILABILITY OF INFORMATION

Section 103.10(d) of the Customs Regulations (19 CFR 103.10(d)) provides, in part, that information contained in export declarations filed with Customs officials for any official purpose is exempt from disclosure as privileged or confidential information, except for the purpose for which such documents are required to be filed.

Section 30.91, title 15, Code of Federal Regulations (15 CFR 30.91), states that the information contained in Shipper's Export Declarations is confidential and is not subject to disclosure except in those instances where the Secretary of Commerce determines that the withholding of such information is contrary to the national interest (50 U.S.C. App. 2406(c)). The Secretary of Commerce has determined that certain United States Government agencies charged with export responsibilities for certain commodities may, through Customs, gain access to information contained in Shipper's Export Declarations. A list of Federal agencies and the commodities for which they have export responsibilities is set forth in 15 CFR 370.10.

In addition, the Secretary of Commerce has determined that the information contained in Shipper's Export Declarations may be made available, upon request, to the Federal Maritime Commission and to the Civil Aeronautics Board.

U.S. Customs Service

(T.D. 76-165)

Availability of Information—Customs Regulations amended

Section 103.10(d), Customs Regulations, relating to privileged or confidential information exempt from disclosure, amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 103 — AVAILABILITY OF INFORMATION

Section 103.10(d) of the Customs Regulations (19 CFR 103.10(d)) provides, in part, that information contained in export declarations filed with Customs officials for any official purpose is exempt from disclosure as privileged or confidential information, except for the purpose for which such documents are required to be filed.

Section 30.01, title 15, Code of Federal Regulations (15 CFR 30.01), states that the information contained in Shipper's Export Declarations is confidential and is not subject to disclosure except in those instances where the Secretary of Commerce determines that the withholding of such information is contrary to the national interest (50 U.S.C. App. 2406(c)). The Secretary of Commerce has determined that certain United States Government agencies charged with export responsibilities for certain commodities may, through Customs, gain access to information contained in Shipper's Export Declarations. A list of Federal agencies and the commodities for which they have export responsibilities is set forth in 15 CFR 370.10.

In addition, the Secretary of Commerce has determined that the information contained in Shipper's Export Declarations may be made available, upon request, to the Federal Maritime Commission and to the Civil Aeronautics Board.

It is therefore necessary to amend section 103.10(d) of the Customs Regulations to provide for those instances where it has been determined by the Secretary of Commerce that the information contained in Shipper's Export Declarations may be disclosed.

Accordingly, paragraph (d) of section 103.10 of the Customs Regulations (19 CFR 103.10(d)) is amended to read as follows:

§ 103.10 Classes of Customs documents exempt from disclosure.

* * * * *

(d) *Privileged or confidential information.* Trade secrets and commercial or financial information obtained from any person which is privileged or confidential, except as set forth below:

(1) Information contained in invoices, entries, vessel manifests, export declarations, official reports of investigating officers, records pertaining to the licensing of and the revocation or suspension of a license of a customhouse broker, and other papers or documents filed with Customs officers for any official purpose which contain trade secrets, or commercial or financial information, is exempt from disclosure except for the purpose for which such documents are required to be filed or as otherwise specified in this paragraph.

(2) Information contained in vessel manifests and summary statistical reports of importations and exportations are available for inspection and copying by certain representatives of the press to the extent permitted by section 103.11.

(3) Information obtained in connection with investigations under the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*), is available for disclosure under the provisions of section 153.23 of this chapter.

(4) Information contained in Shipper's Export Declarations is available, upon request, for disclosure to United States Government agencies charged with export responsibilities for certain commodities, as listed in 15 CFR 370.10. Information contained in Shipper's Export Declarations may also be made available, upon request, to the Federal Maritime Commission and to the Civil Aeronautics Board. The disclosure of this information by Customs is in accordance with determinations made by the Secretary of Commerce that the withholding of such information is contrary to the national interest (50 U.S.C. App. 2406(c)).

(5) Importers and exporters or their duly authorized brokers, attorneys, or agents, may be permitted to examine manifests with respect to any consignment of goods in which they have a proper and legal interest as principal or agent. No general examination of manifests or the making of any copies or notations from such

It is therefore necessary to amend section 103.10(d) of the Customs Regulations to provide for those instances where it has been determined by the Secretary of Commerce that the information contained in Shipper's Export Declarations may be disclosed.

Accordingly, paragraph (d) of section 103.10 of the Customs Regulations (19 CFR 103.10(d)) is amended to read as follows:

§ 103.10 Classes of Customs documents exempt from disclosure.

* * * * *

(d) Privileged or confidential information. Trade secrets and commercial or financial information obtained from any person which is privileged or confidential, except as set forth below:

(1) Information contained in invoices, entries, vessel manifests, export declarations, official reports of investigating officers, records pertaining to the licensing of and the revocation or suspension of a license of a customhouse broker, and other papers or documents filed with Customs officers for any official purpose which contain trade secrets, or commercial or financial information, is exempt from disclosure except for the purpose for which such documents are required to be filed or as otherwise specified in this paragraph.

(2) Information contained in vessel manifests and summary statistical reports of importations and exportations are available for inspection and copying by certain representatives of the press to the extent permitted by section 103.11.

(3) Information obtained in connection with investigations under the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*), is available for disclosure under the provisions of section 103.33 of this chapter.

(4) Information contained in Shipper's Export Declarations is available, upon request, for disclosure to United States Government agencies charged with export responsibilities for certain commodities, as listed in 15 CFR 370.10. Information contained in Shipper's Export Declarations may also be made available, upon request, to the Federal Maritime Commission and to the Civil Aeronautics Board. The disclosure of this information by Customs is in accordance with determinations made by the Secretary of Commerce that the withholding of such information is contrary to the national interest (50 U.S.C. App. 2404(c)).

(5) Importers and exporters or their duly authorized brokers, attorneys, or agents, may be permitted to examine manifests with respect to any consignment of goods in which they have a proper and legal interest as principal or agent. No general examination of manifests or the making of any copies or notations from such

manifests shall be permitted except with respect to the particular importation or exportation in which they have a proper and legal interest.

(R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 501, 65 Stat. 290, as amended (5 U.S.C. 301, 552, 19 U.S.C. 66, 1624))

Inasmuch as this amendment merely conforms the Customs Regulations to the requirements of existing statutes and requires no public initiative, notice and public procedure thereon is found to be unnecessary, and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

Effective date. This amendment will be effective upon publication in the FEDERAL REGISTER.

(ADM-9-03)

VERNON D. ACREE,
Commissioner of Customs.

Approved May 28, 1976,
DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the FEDERAL REGISTER June 8, 1976 (41 FR 22936)]

(T.D. 76-166)

Entry of Foreign-Made Pleasure Boats and Equipment—Customs Regulations amended

Section 12.85, Customs Regulations, added to reflect and implement certain sections of the Coast Guard Regulations

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 12 – SPECIAL CLASSES OF MERCHANDISE

On June 17, 1975, a notice of proposed rulemaking was published in the FEDERAL REGISTER (40 FR 25595), which proposed to amend Part 12 of the Customs Regulations (19 CFR Part 12) to reflect

manifests shall be permitted except with respect to the particular importation or exportation in which they have a proper and legal interest.

(R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 501, 65 Stat. 290, as amended (5 U.S.C. 301, 552, 19 U.S.C. 66, 1624))

Inasmuch as this amendment merely conforms the Customs Regulations to the requirements of existing statutes and requires no public initiative, notice and public procedure thereon is found to be unnecessary, and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

Effective date. This amendment will be effective upon publication in the FEDERAL REGISTER.

(ADM-9-03)

VERNON D. ACREE,
Commissioner of Customs.

Approved May 28, 1976,
DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the FEDERAL REGISTER June 8, 1976 (41 FR 22956)]

(T.D. 76-166)

Entry of Foreign-Made Pleasure Boats and Equipment—Customs Regulations amended

Section 12.85, Customs Regulations, added to reflect and implement certain sections of the Coast Guard Regulations

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 12 – SPECIAL CLASSES OF MERCHANDISE

On June 17, 1975, a notice of proposed rulemaking was published in the FEDERAL REGISTER (40 FR 25395), which proposed to amend Part 12 of the Customs Regulations (19 CFR Part 12) to reflect

and implement those sections of the Coast Guard Regulations which set forth safety standards for certain foreign-made pleasure boats imported into the United States after November 1, 1972. The subject Coast Guard Regulations (33 CFR Parts 181, 183) were issued under the authority of sections 5, 7, and 39 of the Federal Boat Safety Act of 1971, Public Law 92–75, approved August 10, 1971 (46 U.S.C. 1454, 1456, 1488). Section 11 of the Act (46 U.S.C. 1460) provides that the Secretaries of the Department of the Treasury and the Department of Transportation may issue joint regulations concerning the importation of pleasure boats under safety standards described in accordance with the Act.

Interested persons were given 45 days from the date of publication of the notice to submit data, views or arguments with respect to the proposed amendment. After consideration of the comment received, it has been determined that the proposed amendment should be adopted as set forth in the notice of proposed rulemaking.

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below.

Effective date. This amendment shall become effective 30 days after publication in the FEDERAL REGISTER. (095792)

(ADM–9–03)

R. RAYMOND,
Acting Commissioner of Customs.

Approved April 14, 1976,
DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

Approved May 28, 1976,
O. W. SILER,
Commandant,
United States Coast Guard.

[Published in the FEDERAL REGISTER June 10, 1976 (41 FR 23398)]

SAFETY STANDARDS FOR BOATS AND ASSOCIATED EQUIPMENT

§ 12.85 Coast Guard boat and associated equipment safety standards.

(a) *Applicability of standards or regulations prescribed by the Commandant, United States Coast Guard.* Boats and associated equipment (as hereinafter defined) are subject to United States

Coast Guard safety regulations or standards when imported or, under certain conditions, brought into the United States after November 1, 1972. Those regulations or standards are prescribed by the Commandant, United States Coast Guard, pursuant to sections 5, 7, and 39, Federal Boat Safety Act of 1971 (46 U.S.C. 1454, 1456, 1488), as set forth in 33 CFR Parts 181, 183.

(1) The term "boats" includes:

(i) All vessels manufactured or used primarily for noncommercial use.

(ii) All vessels leased, rented, or charted to another for the latter's noncommercial use.

(iii) All vessels engaged in the carrying of six or fewer passengers (see section 4.80 of this chapter on prohibitions against foreign vessels transporting passengers in the coastwise trade).

(2) For purposes of section 12.85 the term "boat" does not include:

(i) Foreign vessels temporarily using waters subject to United States jurisdiction.

(ii) Military or public vessels of the United States, except recreational type public vessels.

(iii) A vessel whose owner is a State or subdivision thereof, which is principally used for governmental purposes, and which is clearly identifiable as such.

(iv) Ships' lifeboats.

(3) The term "associated equipment" means:

(i) Any system, part, or component of a boat as originally manufactured, or a similar part or component manufactured or sold for replacement, repair, or improvement of such system, part, or component (excluding radio equipment).

(ii) Any accessory or equipment for, or appurtenance to, a boat (excluding radio equipment).

(iii) Any marine safety article, accessory, or equipment intended for use by a person on board a boat (excluding radio equipment).

(4) The term "product" as used in this section, includes the terms "boats" and "associated equipment" as defined in subparagraphs (1), (2), and (3) of this paragraph.

(b) *Evidence of compliance with boating standards or regulations as condition of entry.* A product for which entry is sought into the Customs territory of the United States will, subject to the exceptions specified in paragraph (c) of this section, be denied entry unless accompanied by evidence of compliance with standards or regulations as follows:

Coast Guard safety regulations or standards when imported or, under certain conditions, brought into the United States after November 1, 1972. Those regulations or standards are prescribed by the Commandant, United States Coast Guard, pursuant to sections 5, 7, and 39, Federal Boat Safety Act of 1971 (46 U.S.C. 1454, 1456, 1488), as set forth in 33 C.F.R. Parts 181, 183.

(1) The term "boats" includes:

(i) All vessels manufactured or used primarily for noncommercial use.

(ii) All vessels leased, rented, or chartered to another for the latter's noncommercial use.

(iii) All vessels engaged in the carrying of six or fewer passengers (see section 4.80 of this chapter on prohibitions against foreign vessels transporting passengers in the coastwise trade).

(2) For purposes of section 12.85 the term "boat" does not include:

(i) Foreign vessels temporarily using waters subject to United States jurisdiction.

(ii) Military or public vessels of the United States, except recreational type public vessels.

(iii) A vessel whose owner is a State or subdivision thereof, which is principally used for governmental purposes, and which is clearly identifiable as such.

(iv) Ships' lifeboats.

(3) The term "associated equipment" means:

(i) Any system, part, or component of a boat as originally manufactured, or a similar part or component manufactured or sold for replacement, repair, or improvement of such system, part, or component (excluding radio equipment).

(ii) Any accessory or equipment for, or appurtenance to, a boat (excluding radio equipment).

(iii) Any marine safety article, accessory, or equipment intended for use by a person on board a boat (excluding radio equipment).

(4) The term "product" as used in this section, includes the terms "boats" and "associated equipment" as defined in subparagraphs (1), (2), and (3) of this paragraph.

(b) *Evidence of compliance with boating standards or regulations as condition of entry.* A product for which entry is sought into the Customs territory of the United States will, subject to the exceptions specified in paragraph (c) of this section, be denied entry unless accompanied by evidence of compliance with standards or regulations as follows:

(1) A product subject to standards prescribed in 33 CFR Part 183 will have affixed to it a compliance certification label in accordance with the requirements of Subpart B, 33 CFR Part 181.

(2) A boat hull subject to Subpart C, 33 CFR Part 181 will have affixed to it a hull identification number affixed by the importer or the original manufacturer. The number shall comply with the format requirements of Subpart C, 33 CFR Part 181.

(c) *Products not in compliance with standards or regulations: Alternative evidence required as condition of entry and release.* Certain products shall be permitted entry and release without a compliance certification label or hull identification number affixed, as is required by Subparts B and C, 33 CFR Part 181. If they fall within one of the following categories, and if the conditions for entry and release specified for each category of product are met:

(1) *Products manufactured before standards or regulations in effect.* For certain products manufactured before an applicable standard or regulation was in effect, a declaration will be filed in accordance with the requirements of paragraph (d) of this section. The declaration will state that the product was manufactured before the applicable standard or regulation was in effect. If the district director believes that it is necessary in a particular case, he should communicate with the nearest Coast Guard district commander by the most expedient means to request that the Coast Guard determine that alteration of the product is not required. A verbal declaration is acceptable at the option of the district director for products entering from Canada or Mexico otherwise than by sea.

(2) *Products exempted from standards or regulations by Coast Guard Grant of Exemption.* For certain products specifically exempted from applicable standards or regulations by a Coast Guard Grant of Exemption, a declaration will be filed in accordance with paragraph (d) of this section. The declaration will state that the product has been specifically exempted from applicable standards or regulations by a U.S. Coast Guard Grant of Exemption, issued under the authority of section 9 of the Federal Boat Safety Act of 1971 (46 U.S.C. 1458), and in effect on the date the product was manufactured. The declaration will also state that the product complies with all the terms and conditions of the exemption. A copy of the exemption, certified by the importer or consignees to be a true copy, shall be attached to each declaration.

(3) *Products to be brought into conformity.* In the case of products that are not in conformity at the time of entry but will be brought into conformity, a declaration will be filed in accordance with paragraph (d) of this section. The declaration will state that the

product does not conform with applicable safety standards or regulations, but that the importer or consignee will bring the product into conformity with safety standards or regulations, and will also state that the product will not be sold or offered for sale, or used on waters subject to the jurisdiction of the United States and on the high seas beyond the territorial seas for a vessel owned in the United States except for the purpose of bringing it into conformity, until the bond has been satisfied with respect to this obligation. To secure entry under this provision, bond must be given in accordance with paragraph (e)(1) of this section.

(4) *Certain products entering the United States for repair or alteration.* In the case of a nonresident of the United States who wishes to enter a product for the purpose of making repairs or alterations to it for a period not exceeding 60 days from the date of entry, a declaration will be filed in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is a nonresident of the United States, that the product is being brought in for the purpose of making repairs or alterations to it, that it will not remain in the Customs territory of the United States for more than 60 days following the date of the entry, and that it will not be offered for sale, sold, or used for pleasure in waters subject to the jurisdiction of the United States during that time. However, the declaration required by this subparagraph shall be waived for persons regularly entering the United States from Canada or Mexico otherwise than by sea who obtain, by application to the district director, an appropriate means of identification that has been affixed to the boat to serve in place of the declaration.

(5) *Products owned by certain foreign government or international organization personnel.* In the case of an importer or consignee employed in one of the capacities set forth in this subparagraph, a declaration will be filed in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is either a member of the armed forces of a foreign country on assignment in the United States, or is a member of the Secretariat of a public international organization so designated pursuant to section 1 of the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), on assignment in the United States, or is a member of the personnel of a foreign government on assignment in the United States who comes within the class of of persons for whom free entry of boats has been authorized by the Department of State, and that he is importing the product for purposes other than resale.

product does not conform with applicable safety standards or regulations, but that the importer or consignee will bring the product into conformity with safety standards or regulations, and will also state that the product will not be sold or offered for sale, or used on waters subject to the jurisdiction of the United States and on the high seas beyond the territorial seas for a vessel owned in the United States except for the purpose of bringing it into conformity, until the bond has been satisfied with respect to this obligation. To secure entry under this provision, bond must be given in accordance with paragraph (e)(1) of this section.

(4) *Certain products entering the United States for repair or alteration.* In the case of a nonresident of the United States who wishes to enter a product for the purpose of making repairs or alterations to it for a period not exceeding 60 days from the date of entry, a declaration will be filed in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is a nonresident of the United States, that the product is being brought in for the purpose of making repairs or alterations to it, that it will not remain in the Customs territory of the United States for more than 60 days following the date of the entry, and that it will not be offered for sale, sold, or used for pleasure in waters subject to the jurisdiction of the United States during that time. However, the declaration required by this subparagraph shall be waived for persons regularly entering the United States from Canada or Mexico otherwise than by sea who obtain, by application to the district director, an appropriate means of identification that has been affixed to the boat to serve in place of the declaration.

(5) *Products owned by certain foreign governments or international organizations personnel.* In the case of an importer or consignee employed in one of the capacities set forth in this subparagraph, a declaration will be filed in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is either a member of the armed forces of a foreign country on assignment in the United States, or is a member of the Secretariat of a public international organization so designated pursuant to section 1 of the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), on assignment in the United States, or is a member of the personnel of a foreign government on assignment in the United States who comes within the class of persons for whom free entry of boats has been authorized by the Department of State, and that he is importing the product for purposes other than resale.

(6) *Certain products entered for tests or experimentation.* In the case of an importer or consignee seeking to enter a product, for tests or experimentation for a period not to exceed one year, that will not be sold in the United States, a declaration will be filed in accordance with the requirements of paragraph (d) of this section. The declaration will state that the importer or consignee is importing the product solely for the purpose of tests or experiments and it will not be sold or operated in the United States, except where such operation is an integral part of the tests and experiments for which the product was imported. The importer will attach to the declaration a description of the tests and experiments for which the product is being imported, the time period estimated to complete the tests, and the disposition to be made of the product after the tests and experiments are completed. Entry under this subparagraph may be authorized for a period not to exceed one year.

(d) *Declaration requirements.* All declarations submitted under paragraph (c) of this section, except verbal declarations submitted pursuant to paragraph (c)(1) of this section, must:

(1) Be filed with the entry, in duplicate.

(2) Be signed by the importer or consignee.

(3) State the name and United States address of the importer or consignee.

(4) State the entry number and date.

(5) Provide the make, model, and hull identification number, if affixed, of any boat, and a description of any equipment or component.

(6) Identify, if known, the city or State in which the product will be principally located.

The district director shall immediately forward the original of a declaration to the Commandant (G–BBC/62), U.S. Coast Guard, Washington, D.C. 20590.

(e) *Release under bond.*

(1) *When bond required.* A bond in the amount prescribed by section 113.14 of this chapter will be required of the importer or consignee on Customs Form 7551, 7553, or 7595 when a declaration is made that a product is to be brought into conformity. When the importer or consignee of a product declares that it will be brought into conformity before being sold or offered for sale, or before being used on waters subject to the jurisdiction of the United States and on the high seas beyond the territorial seas for a vessel owned in the United States and seeks entry of the product under paragraph (c)(3) of this section, the entry shall be accepted only if bond is given for the production of a statement by either the

(5) Certain products entered for tests or experimentation. In the case of an importer or consignee seeking to enter a product for tests or experimentation for a period not to exceed one year, that will not be sold in the United States, a declaration will be filed in accordance with the requirements of paragraph (d) of this section. The declaration will state that the importer or consignee is importing the product solely for the purpose of tests or experiments and it will not be sold or operated in the United States, except where such operation is an integral part of the tests and experiments for which the product was imported. The importer will attach to the declaration a description of the tests and experiments for which the product is being imported, the time period estimated to complete the tests, and the disposition to be made of the product after the tests and experiments are completed. Entry under this subparagraph may be authorized for a period not to exceed one year.

(d) *Declaration requirements.* All declarations submitted under paragraph (c) of this section, except verbal declarations submitted pursuant to paragraph (e)(1) of this section, must:

(1) Be filed with the entry, in duplicate.

(2) Be signed by the importer or consignee.

(3) State the name and United States address of the importer or consignee.

(4) State the entry number and date.

(5) Provide the make, model, and hull identification number, if affixed, of any boat, and a description of any equipment or component.

(6) Identify, if known, the city or State in which the product will be principally located.

The district director shall immediately forward the original of a declaration to the Commandant (G-RBC/82), U.S. Coast Guard, Washington, D.C. 20590.

(e) *Release under bond.*

(1) *When bond required.* A bond in the amount prescribed by section 113.14 of this chapter will be required of the importer or consignee on Customs Form 7551, 7553, or 7595 when a declaration is made that a product is to be brought into conformity. When the importer or consignee of a product declares that it will be brought into conformity before being sold or offered for sale, or before being used on waters subject to the jurisdiction of the United States and on the high seas beyond the territorial seas for a vessel owned in the United States and seeks entry of the product under paragraph (c)(3) of this section, the entry shall be accepted only if bond is given for the production of a statement by either the

importer or the consignee that the product described in the declaration is in conformity with applicable safety standards or regulations. The statement shall identify the person or firm who has brought the product into conformity with the standards or regulations and shall describe the nature and extent of the work performed.

(2) *Time limitation to produce statement for which bond is obligated.* Within 90 days after entry, or any additional period as the district director may allow for good cause shown, the importer or consignee shall deliver to both the district director and the Commandant, United States Coast Guard, a copy of the statement for production of which the bond was obligated. If the statement is not delivered to the district director for the port of entry of the product within 90 days after the date of entry or within an additional period allowed by the district director for good cause shown, the importer or consignee shall deliver or cause to be delivered to the district director those products which were released in accordance with this paragraph.

(3) *Damages to be assessed against bond.* In the event that any product is not redelivered within 5 days following the date required by subparagraph (2) of this paragraph, liquidated damages shall be assessed in the full amount of the bond given on Customs Form 7551. When the transaction has been charged against a bond given on Customs Form 7553 or 7595, liquidated damages shall be assessed in the amount that would be demanded under the preceding sentence if the product had been released under a bond given on Customs Form 7551.

(f) *Products refused entry.* If a product is denied entry under the provisions of this section, the district director shall refuse to release the product for entry into the United States and shall issue a notice of the refusal to the importer or consignee.

(g) *Disposition of products refused entry into the United States; redelivered products.* Products which are denied entry under paragraph (b) of this section, or which are redelivered in accordance with paragraph (e)(2) of this section, and which are not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery, shall be disposed of under Customs laws and regulations. However, no such disposition shall result in an introduction into the United States of a product in violation of the Federal Boat Safety Act of 1971 (46 U.S.C. 1451, 1489).

(Sec. 623, 46 Stat. 759, as amended, secs. 5, 6, 7, 11, 15, 85 Stat. 215, 216, 217, 219 (19 U.S.C. 1623, 46 U.S.C. 1454, 1455, 1456, 1460, 1464))

(R.S. 251, as amended, secs. 624, 46 Stat. 759 (5 U.S.C. 301, 19 U.S.C. 66, 1624))

importer or the consignee that the product described in the declaration is in conformity with applicable safety standards or regulations. The statement shall identify the person or firm who has brought the product into conformity with the standards or regulations and shall describe the nature and extent of the work performed.

(2) *Time limitation to produce statement for which bond is obligated.* Within 90 days after entry, or any additional period as the district director may allow for good cause shown, the importer or consignee shall deliver to both the district director and the Commandant, United States Coast Guard, a copy of the statement for production of which the bond was obligated. If the statement is not delivered to the district director for the port of entry of the product within 90 days after the date of entry or within an additional period allowed by the district director for good cause shown, the importer or consignee shall deliver or cause to be deliverd to the district director those products which were released in accordance with this paragraph.

(3) *Damages to be assessed against bond.* In the event that any product is not redelivered within 5 days following the date required by subparagraph (2) of this paragraph, liquidated damages shall be assessed in the full amount of the bond given on Customs Form 7551. When the transaction has been charged against a bond given on Customs Form 7553 or 7595, liquidated damages shall be assessed in the amount that would be demanded under the preceding sentence if the product had been released under a bond given on Customs Form 7551.

(f) *Products refused entry.* If a product is denied entry under the provisions of this section, the district director shall refuse to release the product for entry into the United States and shall issue a notice of the refusal to the importer or consignee.

(g) *Disposition of products refused entry into the United States; redelivered products.* Products which are denied entry under paragraph (b) of this section, or which are redelivered in accordance with paragraph (e)(2) of this section, and which are not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery, shall be disposed of under Customs laws and regulations. However, no such disposition shall result in an introduction into the United States of a product in violation of the Federal Boat Safety Act of 1971 (46 U.S.C. 1451, 1489).

(Sec. 623, 46 Stat. 759, as amended, secs. 5, 6, 7, 11, 15, 85 Stat. 215, 216, 217, 219 (19 U.S.C. 1623, 46 U.S.C. 1454, 1455, 1456, 1460, 1464))

(R.S. 251, as amended, secs. 624, 46 Stat. 759 (5 U.S.C. 301, 19 U.S.C. 66, 1624))

(T.D. 76-167)

Countervailing duties—Sugar content of certain articles from Australia

Net amount of bounty declared for the period January 1975 through December 1975 for products of Australia subject to the countervailing duty order published in T.D. 54582; Section 159.47(f), Customs Regulations, amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 159—LIQUIDATION OF DUTIES

The Treasury Department is in receipt of official information that the rate of bounties or grants paid or bestowed by the Australian Government within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303), on the exportation during the period January 1975 through December 1975 of approved fruit products and other approved products containing sugar was nil.

The net amount of bounties or grants on the above-described commodities which are manufactured or produced in Australia is hereby ascertained, determined, or estimated to be the rate stated above. Accordingly, no additional duties on the above-described commodities, imported directly or indirectly from that country, shall be assessed and collected under section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)), under "Australia—Sugar content of certain articles" is amended (1) by deleting therefrom the reference to T.D. 70-225, 71-276, and 73-277, and (2) by adding a reference to this Treasury Decision. As amended, the last four lines of the table under this commodity will read:

(T.D. 76-187)

Countervailing duties—Sugar content of certain articles from Australia

Net amount of bounty desired for the period January 1975 through December 1975 for products of Australia subject to the countervailing duty order published in T.D. 72332; Section 159.47(d), Customs Regulations, amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 159—LIQUIDATION OF DUTIES

The Treasury Department is in receipt of official information that the rate of bounties or grants paid or bestowed by the Australian Government within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303), on the exportation during the period January 1975 through December 1975 of approved fruit products and other approved products containing sugar was nil.

The net amount of bounties or grants on the above-described commodities which are manufactured or produced in Australia is hereby ascertained, determined, or estimated to be the rate stated above. Accordingly, no additional duties on the above-described commodities, imported directly or indirectly from that country, shall be assessed and collected under section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

The table in section 159.47(d) of the Customs Regulations (19 CFR 159.47(d)), under "Australia—Sugar content of certain articles" is amended (1) by deleting therefrom the reference to T.D. 70-225, 71-270, and 73-277, and (2) by adding a reference to this Treasury Decision. As amended, the last four lines of the table under this commodity will read:

Country	Commodity	Treasury Decision	Action
		55716	Certain articles exempted as to shipments exported on or after July 19, 1962
		74–133	New rate
		75–54	New rate
		76–167	New rate

(R.S. 251, as amended, secs. 303, 624, 46 Stat. 687, as amended, 759; 19 U.S.C. 66, 1303, 1624).

(APP–4–05)

G. R. DICKERSON,
Acting Commissioner of Customs.

Approved June 7, 1976,
DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the FEDERAL REGISTER June 11, 1976 (41 FR 23669)]

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1170)

ALCAN SALES, DIV. OF ALCAN ALUMINUM CORPORATION v. THE UNITED STATES, No. 76-9 (—F 2d—)

United States Court of Customs and Patent Appeals, June 3, 1976

Appeal from United States Customs Court, Court No. 72-9-01963

[Affirmed.]

Barnes, Richardson & Colburn, Rufus E. Jarman, Jr., attorneys of record, for appellant.

Rex E. Lee, Assistant Attorney General, *Andrew P. Vance*, Chief, Customs Section, *David O. Elliott* for the United States.

[Submitted on the Record]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, LANE and MILLER, *Associate Judges*.

PER CURIAM.

Appellants brought an action challenging the President's imposition of an import surcharge in Proclamation No. 4074 of August 15, 1971. The United States Customs Court granted the motion of the United States for summary judgment in view of the decision and judgment of this court in *The United States* v. *Yoshida International, Inc.*, 63 CCPA —, C.A.D. 1160, 526 F. 2d 560 (1975).

Appellant's motion for summary reversal and appellee's cross-motion for dismissal of the appeal have been denied by this court.

To expedite this appeal, this court granted appellant's motion for relief from printing transcript of record, presenting oral arguments and filing of briefs, and for submission on the record.

Though the parties and the goods differ from those in *Yoshida*, supra, we find the controlling facts and applicable law to be the same in the present case as in *Yoshida*. Accordingly, in accordance with the principle of stare decisis, we affirm the judgment of the Customs Court.

207-863—76——4

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4651)

HAROLD KOREN & CO., INC. *v.* UNITED STATES

Motion to sever and dismiss

Court No. 75-10-02526

Port of New York

[Defendant's motion granted.]

(Dated May 26, 1976)

Serko & Simon (*Joel K. Simon* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Andrew P. Vance*, Chief, Customs Section, and *Edmund F. Schmidt*, trial attorney), for the defendant.

MEMORANDUM OPINION AND ORDER

WATSON, Judge: Defendant's motion to sever and dismiss a portion of this action [1] places in issue the validity of rule 3.2(b)[2] of the rules of this court which provides in essence that a summons, the filing of which is a jurisdictional prerequisite to the commencement of an action in this court,[3] shall be deemed filed as of the date of postmark.

The summons in question was mailed on the last day allowed for commencement of an action [4] and was received by the court on the following day. The defendant challenges the validity of a rule which would consider the summons to have been filed on the day it was mailed, arguing that "filing" means receipt by the court and any rule which allows an action to be commenced by a summons actually received after the expiration of the allowable statutory period expands the jurisdiction of the court beyond that granted by statute.

I have concluded that as praiseworthy as were the motives for its promulgation this rule does indeed operate to expand the jurisdiction of the court to allow the commencement of actions at a time not permitted by the statute. Underlying this conclusion is my opinion that the word "filing" means receipt by the court; that the power given to the court to prescribe the "form, manner, and style" of filing is not so extensive as to allow mailing to be treated as filing, nor can the court create an evidentiary presumption of timely filing under these circumstances.[5]

I have not formed these opinions without a keen awareness of the misfortune that will befall some parties who relied on this rule in good faith. However, no degree of sympathy or sentiment of regret

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[1] The motion is directed at the entries covered by protest Nos. 1001-4-020012 and 1001-4-020569.

[2] Rule 3.2(b) provides that:

For purposes of commencement of an action, a summons sent by registered or certified mail properly addressed to the clerk of the court at One Federal Plaza, New York, New York 10007, with the proper postage affixed and return receipt requested, shall be deemed filed as of the date of postmark.

[3] Section 113 of the Customs Courts Act of 1970, 28 U.S.C. § 2632(a), provides as follows:

Customs Court procedure and fees.

(a) A party may contest denial of a protest under section 515 of the Tariff Act of 1930, as amended, or the decision of the Secretary of the Treasury made under section 516 of the Tariff Act of 1930, as amended, by bringing a civil action in the Customs Court. A civil action shall be commenced by filing a summons in the form, manner, and style and with the content prescribed in rules adopted by the court.

[4] 28 U.S.C. § 2631(a) provides in essence for the barring of an action unless commenced within 180 days of the date of denial of the administrative protest.

[5] I express no opinion regarding what the court may do in the less extreme circumstance of a summons which was mailed sufficiently in advance of the last day to support an expectation that it would arrive on time in the ordinary course of the mail although I must admit to being uncertain whether the previous rule governing filing of a summons, rule 3.2(d)(3), could withstand the logical consequences of the analysis I make herein. Rule 3.2(d)(3) provided that when a summons arrived late, the court, on motion, could order it "to be deemed to have been filed" on the last allowable day upon proof of mailing by registered or certified mail sufficiently in advance of the last day to provide for receipt in the ordinary course of mail. That rule was upheld in *Texas Mex Brick & Import Co.* v. *United States*, 72 Cust. Ct. 291, C.R.D. 74-2 371 F. Supp. 579 (1974) and *Modern Clothing, Inc.* v. *United States*, 73 Cust. Ct. 233, C.R.D. 74-10 (1974).

can withstand the absolute primacy of the principle of law which is at work here; that it is the Congress which determines the jurisdiction of this court. The power of the court, great as it is, must be exercised within the jurisdictional limits of the statute. Not even the most generous inclination to find an equitable solution can allow me to ignore or circumvent the basic jurisdictional requirement that an action must be commenced by the method of filing a summons at the proper time.

The rule here at issue must be immediately distinguished from rules which do not operate in relation to specific statutory jurisdictional limitations. Thus, rule 22 of the Supreme Court rules, which among other things fixes the time for filing a petition for writ of certiorari, provides for timely mailing to be deemed timely filing in the case of petitions from judgments entered in district courts outside the continental United States. In addition, the Supreme Court can relax the time requirements of the rule in the exercise of its discretion and in the interests of justice. See, *Schacht* v. *United States*, 398 U.S. 58 (1970). All this results from the fact that the statute under which rule 22 was promulgated contains no specific indication of the time limits to be allowed or the exact method by which petitions are to be "commenced". 18 U.S.C. § 3772 gives the Supreme Court the authority to " * * * prescribe the times for and manner of taking appeals and applying for writs of certiorari * * *." Thus, the Supreme Court is free to prescribe rules regarding time and method and even relax those rules entirely without exceeding any statutory jurisdictional limitations.

The same cannot be said of the rules this court may prescribe regarding the commencement of an action. In our case the controlling statute sets out both the time limit within which actions must be commenced and the method by which they are to be commenced, which is "filing".

I have found no support for the proposition that "filing" can mean something other than the act of delivering the summons to the possession of the court. In the case of *United States* v. *Lombardo*, 241 U.S. 73 (1916), the government was in the position of arguing for a definition of filing as including deposit in a post office in order to support its claim that the venue of a criminal prosecution for failure to file a certain informational statement in Washington, District of Columbia, was properly laid in the district court of the state of Washington.[6] The government's theory was that the offense was

[6] The offense in question was a failure to file with the Commissioner General of Immigration, located in Washington, D.C., an informational statement required of those who maintained alien women for the purpose of prostitution. Section 6 of the "White Slave Traffic Act" (36 Stat. 825, 826 (1910)).

begun in the state of Washington by the failure to post the required statement.

The Supreme Court rejected the government's theory, approved the district court judge's dismissal of the indictment and quoted, *inter alia*, his conclusion that "[a] paper is filed when it is delivered to the proper official and by him received and filed." There is no suggestion in the *Lombardo* case that the view of filing as receipt is a restrictive meaning developed for cases in which criminal consequences are involved and that a more flexible meaning ought to prevail in civil cases. In fact, the contrary was indicated when the Supreme Court went on to state as follows at page 78:

> * * * A court is constrained by the meaning of the words of a statute. They mark the extent of its power, and our attention has not been called to any case which decides that the requirement of a statute, *whether to secure or preserve a right* or to avoid the guilt of a crime, that a paper shall be filed with a particular officer, is satisfied by a deposit in the post office at some distant place. * * * [Emphasis supplied.]

In the sixty years since the *Lombardo* opinion, there does not appear to have been any change in the common understanding of what constitutes filing or any distinction developed between filings with criminal or civil consequences. *Travis* v. *United States*, 364 U.S. 631, 636 (1961); *Pratt* v. *First California Company, Inc.*, 517 F.2d 11 (10th Cir. 1975); *In re Imperial Sheet Metal, Inc.*, 352 F. Supp. 1149, 1151–1153 (M.D. La. 1973); *Blades* v. *United States*, 407 F. 2d 1397, 1399 (9th Cir. 1969). *Cf. Steele* v. *United States*, 390 F. Supp. 1109, 1112 (S.D. Cal. 1975).

In customs related decision the view of filing as receipt has been generally maintained in such instances as of a statute requiring the filing of an application for review with the Court of Customs Appeals,[7] a statute governing the filing of a notice of appeal with the Court of Customs and Patent Appeals [8] and Customs Court rules requiring the filing of a motion for rehearing [9] and the filing of a complaint.[10]

In the face of the commonly accepted meaning of filing and the formidable body of case law previously discussed, I cannot believe that in providing for the court to prescribe the "form, manner, and style" of filing Congress meant anything more than the attributes of jurisdictional papers and their handling which it has customarily been the province of the courts to prescribe. The phrase "form, manner, and style" does not convey the power to consider as filing

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[7] *United States* v. *Thompson-Starrett Co.*, 12 Ct. Cust. Appls. 28, T.D. 39896 (1923).
[8] *Seneca Grape Juice Corp.* v. *United States*, 61 CCPA 118 (1974).
[9] *Minkap of California, Inc.* v. *United States*, 55 CCPA 1, C.A.D. 926 (1967).
[10] *Andrew Dossett Imports, Inc.* v. *United States*, 69 Cust. Ct. 334, C.R.D. 72-26, 351 F. Supp. 1404 (1972).

an act which has heretofore consistently and clearly been distinguished from filing. Mailing is not a form, manner or style of filing—it is a method of transmission which falls short of accomplishing the act of filing.

For the reasons expressed above, I find that rule 3.2(b) is invalid insofar as it permits the commencement of an action in this court by means of a summons which is not filed until after the expiration of the statutory period in which an action may be commenced. With respect to protest Nos. 1001–4–020012 and 1001–4–020569, the action relating thereto not having been commenced by the filing of a summons within the period provided by statute, the court is without jurisdiction in the case. It is therefore

ORDERED, that this action be and the same hereby is dismissed, insofar as it relates to the entries encompassed in protest Nos. 1001–4–020012 and 1001–4–020569, and that said entries be severed and returned to the regional commissioner at New York.

(C.D. 4652)

JOHN V. CARR & SON, INC.
PACCAR INC., d/b/a DYNACRAFT COMPANY
v. UNITED STATES

Automotive Products Trade Act of 1965—Fabricated components

Pursuant to the Automotive Products Trade Act of 1965, headnote 2(a), part 6B, schedule 6 of the Tariff Schedules of the United States exempts from duty certain merchandise imported from Canada if (1) it is a Canadian article; (2) it has been obtained from a Canadian supplier pursuant to a written order from a bona fide motor vehicle manufacturer in the United States; (3) it is a fabricated component; and (4) it is intended for use as original equipment in the manufacture in the United States of a motor vehicle. In the present case, imported air-brake hose which concededly met all the requirements of the headnote save for the question as to whether the hose is a "fabricated component" was classified by the government under item 772.65 of the tariff schedules as hose and tubing of rubber or plastics and assessed duty at the rate of 5 percent ad valorem. Plaintiffs challenge this classification and contend that the imported hose is properly classifiable as a Canadian article and original motor vehicle equipment and thus free of duty. Against this background, the only issue in controversy is whether the imported hose is a "fabricated component" within the meaning of headnote 2(a), *supra*, and thus entitled to duty-free entry under item 772.66. *Held:* the imported hose is a "fabricated component" rather than a material and therefore plaintiffs' claim for duty-free entry is sustained.

FABRICATED COMPONENTS

The term "fabricated components" includes all elements that go into the final article which meet the conditions the statutory provision imposes. The imported hose meets all the conditions of headnote 2(a), *supra*, and is thus a "fabricated component."

FABRICATED COMPONENTS

The fact that the imported hose is imported in bulk on reels and then cut to length does not change the state of the fabrication of the hose. Indeed, the law is clear that in considering whether an article is a fabricated component, cutting to length does not constitute further fabrication.

FABRICATED COMPONENT—PART

In the Automotive Products Trade Act of 1965, Congress intended the term "fabricated component" to be an inclusive term of far wider application than an automotive "part."

Court No. 72-8-01766

Port of Port Huron (Detroit)

[Judgment for plaintiffs.]

(Decided May 28, 1976)

Helsell, Fetterman, Martin, Todd & Hokanson (*Benjamin G. Porter* of counsel) for the plaintiffs.

Rex E. Lee, Assistant Attorney General (*John A. Gussow* and *Mark K. Neville, Jr.*, trial attorneys), for the defendant.

MALETZ, Judge: This action involves the proper tariff classification of importations described on the special customs invoice as "Dynacraft Hose SAE J1402 Type D." The hose was manufactured by the Goodyear Tire & Rubber Company of Canada, Limited, at Collingwood, Ontario, Canada, and imported in September 1971 by the Dynacraft Company, a division of Paccar Inc., Bellevue, Washington, one of the plaintiffs herein. Plaintiff John V. Carr & Son, Inc. is a customs broker, agent and attorney in fact for the importer.

The imported merchandise was classified by the government under item 772.65 of the Tariff Schedules of the United States as hose and tubing or rubber or plastics and assessed duty at the rate of 5 percent ad valorem. Plaintiffs challenge this classification and contend that the imported hose is properly classifiable under item 772.66 as a Canadian article and original motor vehicle equipment and thus free of duty.

Statutes Involved

772.65	Hose, pipe, and tubing, all the foregoing not specially provided for, of rubber or plastics, suitable for conducting gases or liquids, with or without attached fittings	5% ad val.
772.66	If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)	Free

Schedule 6, Part 6, Subpart B, headnotes:

* * * * * * *

2. Motor Vehicles and Original Equipment Therefor of Canadian Origin.

(a) The term "original motor-vehicle equipment", as used in the schedules with reference to a Canadian article (as defined by general headnote 3(d)), means such a Canadian article which has been obtained from a supplier in Canada under or pursuant to a written order, contract, or letter of intent of a bona fide motor-vehicle manufacturer in the United States, and which is *a fabricated component* intended for use as original equipment in the manufacture in the United States of a motor vehicle, but the term does not include trailers or articles to be used in their manufacture. [Emphasis added.]

* * * * * * *

(d) If any Canadian article accorded the status of original motor-vehicle equipment is not so used in the manufacture in the United States of motor vehicles, such Canadian article or its value (to be recovered from the importer or other person who diverted the article from its intended use as original motor-vehicle equipment) shall be subject to forfeiture, unless at the time of the diversion of the Canadian article the United States Customs Service is notified in writing, and, pursuant to arrangements made with the Service—

(i) the Canadian article is, under customs supervision, destroyed or exported, or

(ii) duty is paid to the United States Government in an amount equal to the duty which would have been payable at the time of entry if the Canadian article had not been entered as original motor-vehicle equipment.

AGREEMENT CONCERNING AUTOMOTIVE PRODUCTS BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA, 17 UST 1372 (1966)

The Government of the United States of America and the Government of Canada,

* * * * * * *

Agree as follows:

* * * * * * *

Article II

(a) The Government of Canada, not later than the entry into force of the legislation contemplated in paragraph (b) of this Article, shall accord duty-free treatment to imports of the products of the United States described in Annex A.

(b) The Government of the United States, during the session of the United States Congress commencing on January 4, 1965, shall seek enactment of legislation authorizing duty-free treatment of imports of the products of Canada described in Annex B. In seeking such legislation, the Government of the United States shall also seek authority permitting the implementation of such duty-free treatment retroactively to the earliest date administratively possible following the date upon which the Government of Canada has accorded duty-free treatment. Promptly after the entry into force of such legislation, the Government of the United States shall accord duty-free treatment to the products of Canada described in Annex B.

* * * * * * *

ANNEX A

1. * * * * * * *

(2) All parts, and accessories and parts thereof, except tires and tubes, when imported for use as original equipment in automobiles to be produced in Canada by a manufacturer of automobiles.

* * * * * * *

(4) All parts, and accessories and parts thereof, except tires and tubes, when imported for use as original equipment in buses to be produced in Canada by a manufacturer of buses.

* * * * * * *

(6) All parts, and accessories and parts thereof, except tires, tubes and any machines or other articles required under Canadian tariff item 438a to be valued separately under the tariff items regularly applicable thereto, when imported for use as original equipment in specified commercial vehicles to be produced in Canada by a manufacturer of specified commercial vehicles.

* * * * * * *

ANNEX B

(1) Motor vehicles for the transport of persons or articles as provided for in items 692.05 and 692.10 of the Tariff Schedules of the United States and chassis therefor, but not including electric trolley buses, three-wheeled vehicles, or trailers accompanying truck tractors, or chassis therefor.[1]

(2) Fabricated components, not including trailers, tires, or tubes for tires, for use as original equipment in the manufacture of motor vehicles of the kinds described in paragraph (1) above.

(3) Articles of the kinds described in paragraphs (1) and (2) above include such articles whether finished or unfinished but do not include any article produced with the use of materials imported into Canada which are products of any foreign country (except materials produced within the customs territory of the United States) . . . .[2]

Against this statutory background, the only issue in controversy is whether the imported hose is a "fabricated component" within the meaning of headnote 2(a), part 6B, schedule 6 of the tariff schedules, and thus entitled to duty-free entry under item 772.66.

I

The facts are these: Plaintiff Paccar Inc. (formerly known as Pacific Car and Foundry Company) manufactures Peterbilt and Kenworth automotive truck tractors in plants located in the United States and Canada. Kenworth truck tractors are manufactured and sold under the trade name of Kenworth Motor Truck Company, an unincorporated division of Paccar. Peterbilt truck tractors are manufactured under the Peterbilt Motors Company trade name, another unincorporated division of Paccar. The parties agree that Paccar, Peterbilt, and Kenworth are all bona fide motor vehicle manufacturers within the meaning of headnote 2(a), part 6B. schedule 6 of the tariff schedules.

Kenworth and Peterbilt truck tractors are heavy-duty trucks. They are classified in the industry as "Class A trucks"—those with a gross vehicle weight of 33,000 pounds and above—and are used extensively in the logging, construction, and long-distance freight hauling industries. While the Peterbilt and Kenworth trucks are commonly used to pull truck trailers, neither Paccar nor its divisions manufacture trailers. The truck tractors typically travel 140,000 miles per year and are in operation up to 5,000 hours per year. They operate both on and off highways.

[1] As of the time of the signing of this agreement in 1965, items 692.05 and 692.10 of the tariff schedules covered, among other things, automobile truck tractors and automobile trucks.

[2] The foregoing Agreement was implemented by the Automotive Products Trade Act of 1965, 19 U.S.C. § 2001 *et seq.*, P.L. 89-283, 79 Stat. 1016 (Oct. 21, 1965).

Components used in trucks must be designed to perform in a variety of weather conditions and temperature extremes, and to withstand vibrations and shocks far more severe than those experienced by components installed in a piece of machinery of similar size and magnitude in a plant. For example, a truck on a single run may travel from arctic cold in Alaska to desert heat in Texas. And at one particular time a piece of hose may be subject to a temperature range of 300 degrees—one end subject to the engine heat and the other to the cold of an Alaskan winter. As a rule of thumb, components used on an over-the-road application must be able to perform under conditions 10 to 20 times more rigorous than automobile applications.

The hose which is the subject of the present suit is purchased by Paccar under its trade name "Dynacraft Company." Dynacraft performs the function of purchasing, inventorying and warehousing various kinds of truck components which are intended for use by the Kenworth and Peterbilt truck manufacturing divisions. The hose is transferred from the Dynacraft division to the Kenworth and Peterbilt divisions by inventory transfers accomplished by appropriate bookkeeping entries.

The subject hose is made by the Goodyear Tire & Rubber Company of Canada, Limited, located at Collingwood, Ontario, Canada (sometimes referred to hereafter as "Goodyear of Canada"). The hose is manufactured in accordance with the Society of Automotive Engineers' ("SAE") specification J1402 Type D Class I. The Society of Automotive Engineers is an automotive industry association which prepares specifications for components used in the automotive field. The SAE J1402 Type D specification delineates performance and construction characteristics which are specifically tailored to the needs and performance characteristics required of an air-brake system during typical truck operations. In this connection, Paccar would be unable to sell vehicles if the hose in its truck air-brake lines did not meet the SAE J1402 Type D specification which is the standard for both the Canadian ad United States automotive industries. Indeed, Paccar requires Goodyear of Canada to manufacture the subject hose so it will exceed certain of the minimum J1401 Type D specifications.

The hose is constructed around a rubber tube. The tube itself is made from a special type of synthetic rubber mixed together with other ingredients to form a rubber compound which is specifically manufactured for oil resistant uses and is designed to meet the SAE J1402 Type B specification. The particular artificial rubber compound used to form the rubber tube used in the J1402 Type D hose is used in only three or four of the several hundred types of hose offered by Goodyear of Canada. The various ingredients are compounded by

being mixed together in a large mixing machine to form a homogeneous mix. After compounding, the rubber is formed in slabs approximately 30 inches by 60 inches and stored for future use on wooden or metal skids.

When ready to be used, the rubber compound is shredded into strips and fed into an extruder. The extruder forms a rubber tube around a continuous nylon mandrel. The external dimension of the tube is determined by a die placed at the head of the extruder. The nylon mandrel around which the tube is extruded assures that the inside dimensions of the tube will remain constant and will meet the SAE specification which requires the hose to be mandrel built. The nylon mandrel, which remains inside the rubber tube during the hose construction process, supports the tube as it is fabricated into hose.[3]

After a 12-hour cooling period, the rubber tube with the nylon mandrel inside it is put through a braiding machine where three layers of braid are applied. As the tube passes through the braiding machine, a series of bobbins revolve around it forming a braid of fabric yarn. Next the tube covered with the first fabric braid passes through a box where it picks up a rubber based liquid cement. A second braid made of brass coated high carbon steel wire is applied on top of the rubber cement and the first layer of fabric braid. A strip of rubber which looks like a roll of friction tape is next laid on and surrounds the braid of wire. A third layer of braid, again consisting of a fabric yarn, is applied on top of the earlier braids and layers of rubber. After the hose passes through a latex dip, which impregnates the outer braid with a coating to protect against environmental conditions, the hose is rolled on to a large metal reel which can hold some 500 feet of hose.

After application of the two fabric and one steel braid and intervening layers of rubber cement, friction tape and latex dip, the hose is cured. First the uncured hose is unrolled and drawn through a lead press. The lead press extrudes billets of lead, under heat and hydraulic pressure, around the hose. The lead-sheathed hose is loaded onto a rather large reel which is put into a large autoclave or steam heater. The hose is then cured for approximately 30 minutes at 300 degrees Fahrenheit. As the hose is cured, the lead sheath forms a continuous external mold around the hose, and the nylon mandrel, which is still inside the middle rubber tube, expands. As a consequence, the hose is compressed between the nylon mandrel and external lead sheath giving it a solid construction with adhesion between component layers of the hose. The heat and pressure also cause the layer of rubber

[3] It is to be noted that a "tube" as it is known within the industry is made of a single extruded compound rather than many materials and is never made on a flexible nylon mandrel.

friction tape to flow into the layers of braid with the results that the curing process chemically cross-links the rubber into a state which will meet the SAE J1402 Type D specification requirements.

After curing, the exterior lead covering is peeled off the hose and the nylon mandrel is removed by blowing it out from the inside of the hose under water pressure. The hose is then proof pressure tested with water under specified pressure, and then passes through a printing machine.

The hose is next coiled on reels for shipment, and after passing various tests, including burst, adhesion, length change under pressure, periodic heat age, tolerance and general inspection tests required by the SAE J1402 Type D specification and by Goodyear of Canada and Paccar, the hose is released for shipment.[4]

The hose is marked by Goodyear in Canada with red lettering known as a "lay-line." Printed along one side of the hose is the "Dynacraft" name and a number identifying the date the hose was made. Also marked on the hose is the Dynacraft part number "1069" by which the hose is identified by the truck manufacturing plants, followed by a number which indicates the internal diameter of the hose. The Dynacraft catalogue describes this part number 1069 as "SAE 40R2 Type D [now J1402 Type D] Penn. State Approved for Air Brake Lines."

On the opposite side, and also in red lettering, appear: the letters "C.A." (which identify the hose as of Canadian origin); "Type D", the hose size expressed in a fraction; and the term "SAE J1402." These markings, repeated every 15 inches along the length of the hose, are required by both the SAE specification J1402 Type D and by Paccar.

In addition to meeting the performance requirements imposed by the SAE specification J1402 Type D and the additional performance requirements imposed by plaintiffs, Goodyear of Canada is also required to obtain Pennsylvania approval for use of the imported hose as automotive equipment within that state. The Commonwealth of Pennsylvania's approval of products for use as automotive equipment is a standard recognized by the industry, and a prerequisite for use of the hose in the other states in the United States and Canada. The Commonwealth of Pennsylvania certified the subject hose for use as automotive equipment.

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[4] As noted above, the hose in its condition as imported is coiled on reels. In this condition, the hose is considered by plaintiffs to be "bulk hose" as distinguished from a "hose assembly" which was defined by a witness for plaintiffs as a "hose complete with fittings attached." As will be discussed later in more detail, the hose in a hose assembly must be cut to length. Plaintiffs, it is to be added, have never imported hose assemblies since their own manufacturing plants make their own assemblies.

Paccar, d/b/a Dynacraft Company, purchased the merchandise in question pursuant to a blanket purchase order entered into with Goodyear of Canada. The purchase order refers to "40R2D" hose which is now known as J1402 Type D and contains the prices and terms and conditions under which the hose is acquired from Goodyear. Under the purchase order, Goodyear agreed to maintain on hand at all times an inventory equal to 25 percent of plaintiff's annual requirements. However, usage of the hose by plaintiff grew so fast that Goodyear was not able to maintain an inventory.

All of the hose imported under the entries in question was used as original equipment; in fact, all hose imported by plaintiff from Goodyear of Canada is intended for original equipment use.

Plaintiff purchases the entire J1402 Type D hose production of Goodyear of Canada. Due to defects in weaving and for other reasons, the length of each piece of hose—which is referred to by plaintiff as "bulk hose"—varies. The bulk hose is imported in various lengths tied end-to-end with twine and rolled onto reels. There is a prescribed mix of various lengths of hose on each reel. Plaintiff requires that each roll contain 10 percent of the hose in lengths of 3 to 25 feet; 25 percent in lengths of 25 to 40 feet; and 65 percent in lengths of over 40 feet. The shorter lengths of hose are at the top of the reel to facilitate use of the hose in the plant.

The bulk hose arrives at the truck manufacturing plant in exactly the same condition as imported, namely on palletized bulk reels of random lengths of hose which are tied together by twine and covered with a polyethylene covering. When ready to be used, a reel of hose is carried by a lift truck to a holding rack, which is located in an area designated as the "hose assembly area" that is adjacent to the truck assembly line. The reason for locating the hose assembly area adjacent to the truck assembly line is that the trucks are custom-built and hence the lengths of the hose frequently cannot be predetermined. Accordingly, for convenience and practicality, the hose assemblies are produced in an area close to the frame assembly. The foreman of the hose assembly area is given a "shopping list," i.e., a list of the lengths of hose and configurations of fittings needed by the lead man in the frame assembly area. If the length of hose needed is not to be found on the holding rack, and it usually is not, a workman pulls off a length of hose from the reel, measures it, and then cuts it to the desired length by use of a cut-off saw. Occasionally, a length of hose will correspond to a needed length as it is pulled off the reel, thus dispensing with the need for cutting to length.

Once cut to the necessary length, hose end fittings are attached to each end of the hose. Although most fittings are attached in the plant, about 15 percent of them are installed at the Lighthouse for the Blind

in Seattle by legally blind and physically handicapped people. The fittings consist of a collar and an insert and nut. The collar fitting, which has threads on the inside, is screwed on over the end of the hose, with the interior threads of the collar interfacing with the exterior cover of the hose. The insert and nut, or in the case of the field reusable model, the insert alone, is tapered and threaded on the exterior. It is inserted inside the hose through the collar. The threads of the insert match those on the inside of the open end of the collar fitting. The insert is screwed through the collar into the hose, compressing and holding the hose between the insert on the inside and the collar on the outside.

There are two kinds of inserts, one of which is a two-piece or field-reusable fitting and may be installed or removed with the use of hand tools—a wrench and a vise. The other type of insert, usually applied in the factory, is a three-piece or factory-reusable fitting which consists of a loose nut and insert and requires the use of a mandrel to install.

The fittings on the hose perform the function of attaching the hose to various truck components, in which connection it is to be noted that all components of a truck are attached to the finished vehicle by some means such as rivets, nuts, bolts, etc.

The imported hose is specifically designed for use in automotive air-brake lines for trucks, and more than 90 percent of the imported hose is actually used in air-brake systems. However, a small portion of the hose is used in the fuel lines and lubricating oil lines of Paccar trucks. The imported hose is used for these applications even though hose designed for fuel lines and lube lines costs half or less as much as the J1402 Type D hose. This is because the braking system of a highway truck is a critical safety system, and the air-brake hose is an integral part of that system. To avoid the possibility that a lower quality hose might be confused with an air-brake hose, Paccar, as a safety precaution, uses hose particularly designed for air-brake service for these other minor purposes in the trucks. The air-brake hose is more expensive than hose designed for lube oil and fuel oil lines because it is wire reinforced and has a higher resistance to heat. Hoses designed for lube oil and fuel oil lines would burst under pressures of between 300 and 800 pounds per square inch and could not be used as air-brake lines which withstand pressures of 7000 to 9000 pounds per square inch before bursting. The use of air-brake lines as lube and fuel lines is considered by plaintiff a misapplication of the hose and would not be used for those purposes if cost were the only consideration.

To the knowledge of the witnesses none of the J1402 Type D hose made for Paccar by Goodyear of Canada has ever been used in non-

automotive uses.[5] Further, the hose is completely fabricated in Canada in which connection the parties stipulated that "the merchandise which is the subject of the instant action is fabricated 'hose', not 'tubing' or 'pipe'." The only thing done to the hose itself at the plant after importation is the cutting of it to length or the trimming of it to size [6] and the attachment of end fittings. As the hose arrives at the plant in its imported condition, it is fully capable of meeting the performance requirements required of it. The hose is still recognizable as the same hose and no change is made in the properties of the hose after installation in a new motor vehicle. Finally, the parties stipulated that the imported merchandise is a Canadian article within the meaning of general headnote 3(d) of the tariff schedules, which in relevant part defines the term as an article that is the product of Canada.

II

The exemptions from duty provided by the Automotive Products Trade Act of 1965, 19 U.S.C. § 2001 *et seq.*, extend to merchandise meeting the following criteria set out in headnote 2(a), part 6B, schedule 6 of the tariff schedules:

1. It must be a Canadian article;
2. It must have been obtained from a supplier in Canada under or pursuant to a written order, contract, or letter of intent of a bona fide motor-vehicle manufacturer in the United States;
3. It must be a fabricated component; and
4. It must be intended for use as original equipment in the manufacture in the United States of a motor vehicle.

The parties stipulated that the hose is a Canadian article. The defendant's answer to plaintiffs' complaint admits that the hose is obtained from a supplier in Canada and that plaintiff Paccar is a bona fide motor vehicle manufacturer. Uncontradicted testimony establishes that the hose was obtained pursuant to a written order or contract, a blanket purchase order and shipping releases between Paccar, d/b/a Dynacraft, and Goodyear of Canada.

The witnesses testified that the intended use of the hose is original equipment in the manufacture of Peterbilt and Kenworth truck tractors by Paccar. In fact, all the hose imported under the entries in question was used as original equipment. The quantity of hose ordered from Goodyear of Canada and the dates of delivery are determined by the production of new Kenworth and Peterbilt tractors

[5] While hose such as here involved is physically suitable for use in a variety of non-automotive systems in transmitting gasses or liquids, its cost is such as to make such use commercially impractical.

[6] Occasionally, as previously noted, the hose does not have to be cut at the plant when the length required corresponds to the length of hose as it comes off the reel.

whose numbers have in the past and in particular in the year in question, 1971, exhausted Goodyear's supply of the subject hose.

Further, as noted previously, the parties have stipulated that the imported hose is "fabricated hose." In these circumstances, the only disputed issue (as indicated earlier) is whether the hose is a "fabricated component" as used in headnote 2(a), part 6B, schedule 6 of the tariff schedules and thus entitled to duty-free entry under item 772.66.

On this question, plaintiffs contend that the imported hose is a "fabricated component" as that term is used in the tariff schedules. Defendant argues, on the other hand, that the imported hose is a mere material.[7] For the reasons that follow, it is concluded that the imported hose is a "fabricated component" and that plaintiffs' claim must therefore be sustained.

At the outset, it is to be noted that the term "fabricated component" contained in the Automotive Products Trade Act (enacted on October 21, 1965) was incorporated by the Congress into the tariff schedules *for the first time* only *two weeks earlier* when the same Congress amended item 807.00 to add the virtually identical term "fabricated components" to describe a class of United States products, the cost of which is excluded in determining the value upon which duties are applied when the completed article is returned to this country. More particularly, section 85 of the Tariff Schedules Technical Amendments Acts of 1965 (P.L. 89–241, 79 Stat. 933, Oct. 7, 1965), amended item 807.00 to provide this favorable treatment to—

> Articles assembled abroad in whole or in part *of fabricated components*, the product of the United States, which (a) were exported, in condition *ready for assembly without further fabrication*, for the purpose of such assembly and return to the United States, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting. [Emphasis added.]

The leading case interpreting the term "fabricated components" is *General Instrument Corporation* v. *United States*, 60 CCPA 178,

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[7] Elaborating on its contention that the hose is a material rather than a fabricated component, defendant's brief states (Br. pp. 15-16):

> The bulk hose is a material, which must undergo a lengthy process of further fabrication before it may be referred to as a hose assembly. Only the hose assembly is usable as a part on a motor vehicle. The hose, itself, is imported in long bundles of hose, tied together, constituting a reel. Plaintiffs try to get the hose in as long lengths as possible. The hose is not marked—there being no indications where the hose should be cut. Cited case authority shows that this lack of pre-cutting, or even pre-marking, is an indicium of the hose's being material.

480 F. 2d 1402, C.A.D. 1106 (1973), reversing the decision of this court in 67 Cust. Ct. 127, C.D. 4263 (1971). In that case, anode foil, cathode foil, paper, metal tabs, plastic insulating film, and cellophane tape were exported in rolls from the United States to Taiwan, where they were then cut to length and assembled into capacitors. The anode foil not only had to be cut to length, but also had to be trimmed to bring it into proper width. The production of the capacitor, considering only those operations involving the United States merchandise, involved *twelve* different steps which were described by the appellate court as follows (60 CCPA at 180–181):

> (1) cutting the anode foil to a specified length from the roll as imported, (2) cutting an anode tab to length from a roll of material, (3) staking the anode tab to the cut anode foil at right angles thereto, (4) interleaving paper and cathode foil from rolls with the anode foil strip and winding them into a roll with the paper between the cathode and anode foils, (5) staking a previously cut cathode tab to the cathode foil at right angles thereto, (6) placing a length of plastic film under the anode tab, (7) adding two or three turns to the rolled-up assembly and then cutting the interleaved paper and cathode foil from the rolls, (8) securing the rolled-up paper and foil assembly against unwinding by applying cellophane tape from a dispenser, (9) immersing the rolled-up assembly in a liquid electrolyte solution, (10) removing the capacitor roll from the electrolyte and welding the cathode lead to the inside of the can, (11) attaching the anode tab to the inside of a previously made rivet and washer assembly and (12) inserting the rolled-up assembly in the can thus finishing the capacitor.

Against this background, the appellate court (as previously noted) reversed the decision of this court and held that the various products on rolls constituted "fabricated components." It is to be added that in *General Instrument* this court had relied upon its earlier decision in *Amplifone Corporation* v. *United States*, 65 Cust. Ct. 58, C.D. 4054 (1970), in which it held that a "fabricated component" had to be a complete unit itself and not subject to any assembly other than direct installation in the final product. The court in *Amplifone* ruled that various products were not "fabricated components" for the following reasons (*id.* at 63):

> . . . they are not in such a state of readiness at the time of exportation as to be capable of being incorporated into the coils, which, of course, is not the imported article. In such state, it may well be, for all the record shows, that each of the exported products in issue lends itself to usage for a hundred and one different purposes. In this state these products are at best described as fabricated products. It is only when they are subjected, while abroad in a foreign country, to measuring, cutting,

winding, melting, etc., that these products can properly be described as component materials for transformer coils. And it is only after the resultant products are incorporated into the coils that the coils themselves become components in a state of readiness for incorporation into the transformers.

The court in *Amplifone* concluded (*id.* at 64):

> Under all the circumstances disclosed by this record we are of the opinion that the exported products do not come within the scope of the term "fabricated components, the products of the United States" as used in item 807.00 of the tariff schedules. As such, we are in accord with the argument advanced herein by defendant as hereinbefore noted and with further argument recorded at page 12 of defendant's brief wherein it is stated ". . . the instant case involves the cutting and forming of *bulk materials* into *component parts, not* the mere *trimming* of *slight* amounts of excess material from an item already substantially completed." . . . [Emphasis in original.]

In the *General Instrument* case the Court of Customs and Patent Appeals rejected the rationale of the *Amplifone* case—the same argument advanced by the defendant in the case at bar—and, in reversing this court, held (as previously indicated) that the various products on rolls constituted fabricated components. The appellate court stated (60 CCPA at 182–183):

> The Government agrees with the reasoning of the Customs Court and argues that the disputed articles were not "fabricated components." In our view, item 807.00 generally defines *"fabricated components" as those components of the whole product* which (a) were not subject to "further fabrication," (b) did not lose their physical identity during assembly and (c) were not advanced in value. *We do not think that the language "fabricated components" has the separate import for which the Government contends. The only reasonable interpretation of item 807.00 is that all elements that go into the imported final article which meet the conditions the item imposes on the fabricated components are subject to the exclusion it provides.*
>
> We find that all the articles in issue here meet those requirements. Concededly all are products of the United States and all went into the imported electrolytic capacitors. *The meaning of "fabricated" is broad and without doubt applies to the rolls of foil, paper, cellophane tape and plastic insulating film which obviously were manufactured articles.* The articles did not lose their physical identity in the capacitor "by change in form, shape or otherwise." . . . [Emphasis added.]

In these circumstances, the subject hose is clearly a "component," i.e., an element which goes into the final article, as the *General Instrument* court defined the term. Even if both parties had not stipulated as a matter of fact that the hose is "fabricated," the numerous products

and manufacturing operations which are required to produce the hose would lead inescapably to that conclusion. As such, the subject hose can only be described as a "fabricated component."

The clear import of the *General Instrument* decision is that fabricated components include *all elements* "that go into the . . . final article which meet the conditions the item imposes on the fabricated components . . . ." The only condition which headnote 2(a), part 6B, schedule 6 of the tariff schedules imposes on "fabricated components" is that they be intended for use as original equipment in the manufacture in the United States of a motor vehicle. Further, "fabricated components" in headnote 2(a), part 6B, schedule 6, unlike "fabricated components" under item 807.00, need not be "ready for assembly without further fabrication." This is emphasized by the report of the House Ways and Means Committee on the Automotive Products Trade Act of 1965 which report states in part (H. Rep. No. 537, 89th Cong., 1st Sess. (1965) p. 27):

> . . . although at the time of importation the component does not have to be in a condition completely ready or assembly without further fabrication, it must at a minimum be so far processed as to be physically recognizable as a component in an unfinished state.

The merchandise in issue far exceeds the Committee report's standard of required fabrication. The report states that "at the time of importation the component *does not* have to be in a condition completely ready for assembly without further fabrication . . . ." The hose at bar is merely despooled and cut to length and the mere act of cutting does not change the state of the fabrication of the hose. Indeed the law is clear that the cutting to length does not constitute "further fabrication." Thus in *General Instrument, supra*, our appellate court stated (60 CCPA at 183–184):

> There remains the matter of whether the items were exported "in condition ready for assembly without further fabrications." In *General Instrument Corporation* v. *United States*, 59 CCPA 171, 462 F. 2d 1156, C.A.D. 1062 (1972), the court regarded that provision met by fine gold wire which was exported on spools and in assembly was bonded at the end to an aluminum strip on a semiconductor chip and then severed. The paper in the present case, and the cathode foil in one form of capacitor, were cut to length after being at least partly assembled into the capacitor roll and thus met the provision in question in the same manner as the gold wire in the cited case. Although the anode foil, the cathode foil in some cases, the metal tabs and the Mylar film were cut to length before assembly with the other articles, we find no reason for considering them subject to any different treatment than the articles cut after assembly. Trimming of the

edges of the anode foil amounts to an operation incidental to the assembly process and not to "further fabrication" under item 807.00. See *C. J. Tower, & Sons of Buffalo* v. *United States*, 62 Cust. Ct. 643, 304 F. Supp. 1187, C.D. 3840 (1969), wherein trimming the edges of a composite sheet assembled abroad was not found to bar treatment under item 807.00.

This court in *The Olga Company* v. *United States*, 71 Cust. Ct. 42, C.D. 4468 (1973), reached the same conclusion, holding that rolls of thread, lace, tape, and elastic, in continuous lengths on large spools constituted fabricated components ready for assembly without further fabrication even though they had to be cut to length before use See also *General Instrument Corporation* v. *United States*, 61 CCPA 86, 499 F. 2d 1318, C.A.D. 1128 (1974).

The short of the matter is that the hose in question is completely fabricated and ready for assembly without further fabrication. In this connection, not only did the parties stipulate that "the merchandise which is the subject of the instant action is fabricated 'hose' . . . ," the witnesses agreed that the hose, as it is imported, is completely fabricated and that no further fabrication of the hose itself is performed after it arrives in the United States. There is no change in the physical or chemical properties of the hose after importation. After installation on a new truck it is still completely identifiable.

The House Ways and Means Committee report previously referred to requires that at the time of importation the item "must at a minimum be so far processed as to be physically recognizable as a component in an unfinished state." H. Rep. No. 537, 89th Cong., 1st Sess. (1965) p. 27. In the case of the Paccar air-brake hose, the fact that it is a component is not only immediately apparent from the product's very nature, but is emblazoned in red legends running the length of the hose. On one side of the hose these announce to the world that it is "Type D, SAE J1402" hose; on the other, Paccar's trade name "Dynacraft" is alternated with the company's part number assigned to the product, "1069". The SAE nomenclature "Type D, SAE J1402" identifies the hose throughout the industry as a specific product—automotive air-brake hose—which has been made in conformance with and meets the performance requirements set forth in the specifications established by the Society of Automotive Engineers. The company's part number, "1069", identifies the item for the Kenworth and Peterbilt divisions of Paccar as one particular truck component.

In sum, at the time of its importation, the hose at bar is a completely finished component and is immediately recognizable as such. It more than meets the requirements of the Ways and Means Committee report to qualify as a "fabricated component." Defendant,

however, points out that this Ways and Means Committee report also states (*id.* at 27):

> The term "fabricated component" is a term of limitation which embraces finished or unfinished components actually incorporated into a motor vehicle. The term does not, however, include materials, such as metal plate, sheet, strip, wire, *pipes and tubes*, and textile piece goods. In other words, although at the time of importation the component does not have to be in a condition completely ready for assembly without further fabrication, it must at a minimum be so far processed as to be physically recognizable as a component in an unfinished state. [Emphasis added.]

With respect to this report, defendant argues that "hose" is similar to "pipes and tubes." Therefore, according to defendant, the hose involved is covered by the words "pipes and tubes" which the report states are materials and thus are not included within the purview of "fabricated components." In point of fact, contrary to defendant's conclusion, the subject merchandise is not "tube" or "pipe." The stipulation of fact entered into between the parties to this litigation states in part: "The merchandise which is the subject of the instant action is fabricated 'hose,' not 'tubing' or 'pipe'."

In a related vein, defendant asserts that "[i]n the case of items 772.65 and 772.66, . . . it is clear that hose *with* its fittings was intended to be covered by item 772.66, while hose without its fittings (and similar pipe and tubing) was not intended to be encompassed in item 772.66 even though falling within the scope of item 772.65." (Br. p. 32, emphasis in original.) However, if Congress intended that hose without fittings not be classified as a fabricated component it would have so specified. For example, fabrications of wire are classifiable under the Automotive Products Trade Act free provision only if "fitted with fittings, or made up into articles," items 642.20 and 642.21. On the other hand, the specific language of items 772.65 and 772.66 provides a duty-free classification for "hose . . . *with or without attached fittings*." Further, the House Ways and Means Committee report previously referred to states, at page 27, in pertinent part, "the component does not have to be in a condition completely ready for assembly without further fabrication . . . ." At most, the attachment of fittings is an *assembly* process, rather than a fabrication of the hose, a fact impliedly recognized by the defendant's own characterization of the hose with fittings attached as a "hose assembly" and its description of the attachment of the fitting as an "assembly operation." (Br. p. 37)

It is to be added that the act of assembling a product does not constitute further fabrication. *General Instrument Corporation* v.

United States, supra, 61 CCPA 86; *General Instrument Corporation* v. *United States, supra,* 60 CCPA 178. Moreover, the defendant's argument that only air-brake hose assemblies are "fabricated components" (Br. pp. 21–22, 32–33) is the same sub-assembly or dual-assembly argument the defendant advanced in *General Instrument Corporation, supra,* 60 CCPA 178, and which our appeals court rejected. *General Instrument Corporation, supra,* 60 CCPA at 182.

The *Harding* cases cited by defendant (*United States* v. *The Harding Co.*, 21 CCPA 307, T.D. 46830 (1933) and *The Harding Co.* v. *United States,* 23 CCPA 250, T.D. 48109 (1936)) have no relevance to the instant case. In the first *Harding* case, so-called brake linings made of asbestos, yarn and wire and imported in bales of running length were held to have been properly classified by the collector as a material, i.e., a manufacture of asbestos yarn rather than as parts of automobiles, finished or unfinished, as claimed by the importer. In the second *Harding* case, the record established that merchandise identical to that in the earlier case was used exclusively in the manufacture of brake linings for automobiles and was commercially unsuitable for other uses. Notwithstanding the exclusivity of use of the merchandise for automobile brake linings, the appellate court adhered to the conclusion that the merchandise was classifiable as a material, i.e., a manufacture of asbestos yarn and not a part of an automobile. In so finding, the court stated (23 CCPA at 253):

> Running through most of the decisions pertinent to the inquiry here, it is made clear that before imported merchandise shall be regarded as parts of an article *the identity of the individual article must be fixed with certainty.* This is not true in the case at bar, and we hold as we held in the former *Harding* case that the imported merchandise is material for making automobile brake linings and is not parts of automobiles. [Emphasis in original.]

Reliance upon the *Harding* cases is misplaced for several reasons. Unlike the present case, the *Harding* decisions involved the issue of what constituted an automobile "*part.*" Nowhere do these decisions consider the term "fabricated component." If Congress had intended to limit duty-free status to only automotive parts it would have so provided, since it was certainly aware of the following meaning of the term "parts" contained in general headnote 10(ij) of the tariff schedules: "A provision for 'parts' of an article covers a product solely or chiefly used as a part of such article . . . ." On this aspect, a review of the tariff schedules shows that Congress intended a variety of Canadian articles to be eligible for duty-free treatment even though capable of many and diverse uses and thus not falling within the category of automotive "parts." For example, staples in strip form

(item 646.20); rivets of base metal (items 646.40 and 646.41); cotters, cotter pins and fasteners or holders (except nuts) used with screws, bolts or studs, of base metal (item 646.42); wood screws of base metal (items 646.49, 646.51 and 646.53); bolts, nuts, studs, screws and washers, screw eyes, screw hooks, and screw rings and turnbuckles not otherwise described in part 3D, schedule 6 (items 646.54 through 646.78, inclusive) are all entitled to duty-free treatment under item 646.79 if Canadian articles and intended for use as original equipment in a motor vehicle. From the foregoing, it is apparent that Congress meant the term "fabricated component" to be an inclusive term of far wider application than an automotive "part."[8]

Finally, defendant argues that because it is potentially possible to utilize the subject hose in non-automotive uses, this affects the product's classification as duty free. But this ignores the clear language of headnote 2(d), part 6B, schedule 6 of the tariff schedules, *supra*, which only requires that the fabricated component be *intended* for use as original equipment in the manufacture in the United States of a motor vehicle. It does not require that the sole, exclusive or even chief use of the article be in motor vehicles or that the fabricated component be an automobile "part." The same point is made in the previously referred to Ways and Means Committee report which states at p. 27 that "the term 'fabricated component' is a term of limitation which embraces finished or unfinished components *actually incorporated* into a motor vehicle." [Emphasis added.]

Beyond that, headnote 2(d), part 6B, schedule 6 allows duty-free entry conditional on the use of the item as original equipment in the manufacture of motor vehicles. If the imported item is diverted from its intended use, it, or its value, is subject to forfeiture unless, at the time of diversion, the Customs Service is notified in writing and arrangements are made either to destroy or export the article or to pay the appropriate duty which would have applied if the article had not been entered duty free under the Automotive Products Trade Act.

In summary, the only cases construing the meaning of the phrase "fabricated components" are the *General Instrument* cases, *supra*, which are not only relevant, but virtually dispositive of the case at bar. In fact (as mentioned previously) the standard required of a "fabricated component" before it is accorded favorable duty-free status as American goods returned under the *General Instrument* decisions is more rigorous than that required of goods qualifying under the Automotive Products Trade Act. For example, to be classified as duty free in the context of American goods returned, the fabricated

[8] It is not without significance that the Automotive Products Agreement itself, *supra*, distinguishes between "parts" and "fabricated components" with Annex A pars. 1 (2, 4 and 6) making reference to "parts" and Annex B (2) making reference to "fabricated components."

component must be "ready for assembly without further fabrication" (item 807.00), while a fabricated component under the Automotive Products Trade Act qualifies for free treatment although not "completely ready for assembly without further fabrication." H. Rep. No. 537, p. 27. In addition, it must be concluded that the term "fabricated components" has the same meaning whether used in the context of American goods returned or the Automotive Products Trade Act. This is particularly true when it is considered that the phrase originated in both areas at about the same time, for the Automotive Products Trade Act of 1965 and the Tariff Schedules Technical Amendments Act of 1965 were both enacted by the *same* Congress within two weeks of each other.

For the reasons stated, it is held that the imported hose is a fabricated component and therefore entitled to duty-free entry under item 772.66. Plaintiffs' claim is therefore sustained and judgment will be entered accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *June 1, 1976.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P76/139	Ford, J. May 25, 1976	J. Gerber & Company et al.	71-5-00163, etc.	Item 653.37 15% or 13%	Item 653.35 8% or 7%	Morris Friedman & Co. v. U.S. (C.D. 4570, aff'd C.A.D. 1157)	New York Candleholders, candlesticks, etc.

P76/140	Landis, J. May 25, 1976	Hancock Gross, Inc	65/9886, etc.	Item 774.60 17% Item 774.25 12.5%	Item 773.25 10%	U.S. v. Hancock Gross, Inc. (C.A.D. 1153)	Philadelphia Gaskets of rubber or plastics; faucet washers; not Canadian articles
P76/141	Maletz, J. May 25, 1976	Mego Corp.	70/62038	Item 737.90 35%	Item 737.55 21%	Agreed statement of facts	New York Toy alphabet blocks or toy building blocks, bricks or shapes
P76/142	Maletz, J. May 25, 1976	Thornton Glove Co., Inc.	74-12-03304	Item 734.97 9%	Item 735.05 7.5% (Claim overruled as to model No. 7952M)	Judgment on the pleadings	New York Gloves, model Nos. 8771, 8771M
P76/143	Re, J. May 25, 1976	Kohner Bros., Inc.	70/48343	Item 737.90 24%	Item 734.15 14%	Agreed statement of facts	New York Solid rubber snakes, etc.; articles used as parts of games played on boards of special design

Decisions of the United States Customs Court

Abstract

Abstracted Reappraisement Decision

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R76/68	Maletz, J. May 25, 1976	Drexel Motors, Inc.	R67/4567	Cost of production	DM 3716.26	Judgment on the pleadings U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Ten Model No. 113 Volkswagen automobiles

APPEAL 76-25.—Walker International Corp. *v.* United States.—FAILURE TO FILE SUBSTITUTION OF ATTORNEYS—ACTION DISMISSED. Appeal from dismissal order of January 23, 1976, rehearing denied March 22, 1976 (not published).

In this case plaintiff-appellant was given 60 days in which to file a motion for substitution of counsel and the court dismissed the action for failure to file the motion. Plaintiff's motion for rehearing was denied.

It is claimed that the Customs Court erred in dismissing appellant's actions; in denying appellant's motion for rehearing and not reinstating appellant's actions; and in finding that Serko & Simon is neither the successor in interest to Serko & Sklaroff nor attorneys of record and thus predicating the original dismissal of this action on the failure of counsel to file a notice of consent to substitution of attorneys.

APPEAL 76-26.—Walker Trading Corp. *v.* United States.—FAILURE TO FILE SUBSTITUTION OF ATTORNEYS—ACTION DISMISSED. Appeal from dismissal order of January 23, 1976, rehearing denied March 22, 1976 (not published).

In this case plaintiff-appellant was given 60 days in which to file a motion for substitution of counsel and the court dismissed the action for failure to file the motion. Plaintiff's motion for rehearing was denied.

It is claimed that the Customs Court erred in dismissing appellant's actions; in denying appellant's motion for rehearing and not reinstating appellant's actions; and in finding that Serko & Simon is neither the successor in interest to Serko & Sklaroff nor attorneys of record and thus predicating the original dismissal of this action on the failure of counsel to file a notice of consent to substitution of attorneys.

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